

Topic: COBRA and the Trade Act of 2002

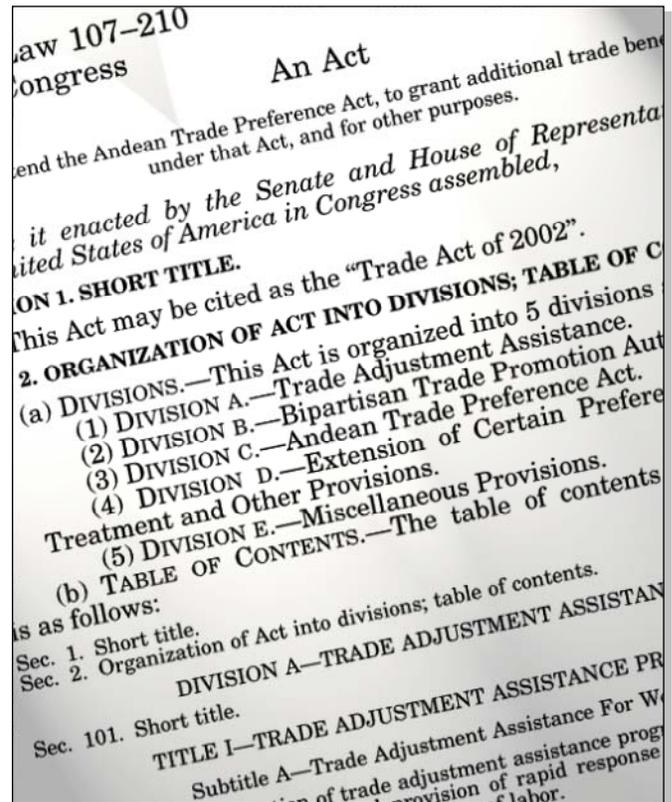
Background

The Trade Act of 2002 amended COBRA to provide a second 60-day COBRA election period for certain individuals. They must be eligible for trade adjustment assistance (TAA) or alternate trade adjustment assistance (ATAA), and not have elected COBRA during the initial 60-day election period that directly followed an ATAA/TAA-related loss of coverage. The intent of this second 60-day election period is to enable those individuals who became TAA or ATAA-eligible after their initial COBRA election period has expired to take advantage of the Health Coverage Tax Credit (HCTC). With the help of the HCTC, the cost of COBRA benefits may become financially manageable for some individuals who could not otherwise afford health coverage. These new COBRA provisions are effective for individuals whose successful petitions for TAA or ATAA were filed on or after November 4, 2002.

TAA/ATAA-Eligibility

The process for determining individual TAA/ATAA certification begins when employees (or their representatives) petition to the Department of Labor to recognize their employer as being adversely affected by trade. Generally, an employer can become TAA/ATAA-certified if the employer meets the following criteria:

- Employees have been totally or partially laid off (a partial layoff means a reduction in hours and wages to 80% or less per week)
- Sales or production have declined due to trade
- Increased imports have contributed to employee layoffs



If the Department of Labor approves the petition, the employees are notified in writing by their local state workforce agency. Once the employees receive notification, they may apply for TAA or ATAA benefits on an individual basis.

Individuals are potentially HCTC-eligible under TAA when they are either receiving Trade Readjustment Assistance (TRA) benefits or are eligible to receive TRA payments but have not yet exhausted unemployment insurance benefits.

Individuals are potentially HCTC-eligible under ATAA when they are eligible to begin receiving their ATAA benefits.



Highlights of the TAA/ATAA-Related COBRA Election Period

- The additional 60-day COBRA election period is available to TAA and ATAA recipients, but not to individuals eligible for the HCTC through the PBGC.
- The additional 60-day COBRA election period begins on the first day of the month in which the individual becomes an eligible TAA or ATAA recipient (when they first become eligible to receive TRA payments or ATAA benefits, respectively). Because the 60-day period is measured from the first day of the month, if an individual is determined TAA/ATAA eligible after the first day of the month, then they will have less than 60 days to elect COBRA.
- In addition, the election period could be shorter in certain circumstances because individuals are required to make an election within six months following the initial TAA/ATAA-related loss of coverage.
- COBRA coverage elected during the second election period is NOT retroactive to the date of the initial loss of coverage. It begins on the first date of the second COBRA election period (However, the lapse in coverage from the initial loss date to the start of the second election period is not counted as a lapse in coverage for the purposes of HIPAA's 63-day lapse in coverage rule).



Frequently Asked Questions

Question: What is the impact on a TAA/ATAA recipient's HCTC registration process if they elect COBRA during the second election period?

Answer: The TAA/ATAA recipient's HCTC registration process does not change. The individual will need to provide a copy of their original COBRA election notice, which they received as a result of their termination from employment and invoice.

Question: How will a health plan administrator (HPA) know that an individual is eligible for a temporary extension of their COBRA election period (i.e. a special COBRA election period)?

Answer: TAA and ATAA eligible individuals should receive from the state workforce agency a certificate that specifies the date they have been determined to be eligible for TAA or ATAA benefits. HPAs may use this certificate to verify that the TAA/ATAA individual is eligible for the special COBRA election period and the date when the special 60-day COBRA election period begins.

This certificate should not be confused with the letter that the TAA/ATAA recipient receives when his or her employer's petition for DOL worker group certification is approved.

The Department of Labor has stated that information on the possible availability of the special COBRA election period should be included in the summary plan description (SPD) of a group health plan as part of its discussion of continuation coverage provisions.

It is anticipated that information on the right to the special COBRA election period, together with other information relating to TAA/ATAA benefits and the HCTC, will be made available to potentially eligible individuals in connection with the certification process for trade adjustment assistance.

